

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

MULHERN GAS CO., INC., et al.,)
)
Plaintiffs,) Case No. 1:23-cv-01267 (GTS/CFH)
)
v.) MOTION FOR LEAVE TO FILE AN
) AMICUS CURIAE BRIEF IN OPPOSITION
WALTER T. MOSLEY, in his official) TO PLAINTIFFS' MOTION FOR
Capacity as Secretary of State,) SUMMARY JUDGMENT
)
Defendant.)
)

Pursuant to Federal Rule of Civil Procedure 7(b) and Local Rule 7.1, Sierra Club respectfully moves this Court for leave to file the attached *amicus curiae* brief in opposition to Plaintiffs' pending summary judgment motion. Defendant Walter Mosley and intervenors PUSH Buffalo and NY-GEO consent to the filing of the motion. Plaintiffs consent to the filing of the motion on the condition that the amicus brief does not exceed twelve pages.

Amicus Sierra Club is a national not-for-profit organization with over 616,000 members nationwide including nearly 37,000 members in New York State. Sierra Club's Building Electrification campaign is active in states across the country working to protect public health by reducing reliance on fossil fuels in buildings. Sierra Club has supported local and state efforts to promote electrification in buildings including filing an amicus brief in support of the City of Berkeley in *California Restaurant Association v. City of Berkeley*, 89 F.4th 1094 (9th Cir. 2024).

This Court has explained that amicus briefs should "normally be allowed" when, *inter alia*, "the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Pratt v. Indian River Central School Dist.*, 2010 WL 11681606, *3 (N.D.N.Y. 2010). Sierra Club's Building Electrification campaign has developed considerable expertise regarding the air quality and public health impacts of burning

fossil fuels in buildings, co-authoring a report in 2020 entitled “Health Effects from Gas Stove Pollution,” conducting extensive indoor air quality testing in kitchens with gas appliances in the D.C. metro area, and commissioning sophisticated photochemical air quality modeling to illuminate the outdoor air quality impacts of nitrogen oxide emissions from buildings. Sierra Club’s work highlights the important public health foundation for the challenged New York All-Electric Buildings Act legislation and situates the legislation firmly within the State of New York’s police powers.

In addition, this Court has highlighted the value of *amicus curiae* “in cases involving matters of public interest.” *Id.* The significant adverse public health impacts caused by the combustion of fossil fuels in buildings are a matter of grave public concern. Indeed, a recent study found such a strong contribution from gas stoves to childhood asthma that in New York State alone, nearly 60,000 cases of childhood asthma could have been prevented if a gas stove was not present in the child’s home. The resolution of this litigation regarding the preemptive scope of the Energy Policy and Conservation Act has broad public health implications. Indeed, last week counsel for Plaintiffs used their flawed preemption theory to challenge appliance emissions standards promulgated by California’s South Coast Air Quality Management District designed to protect air quality and reduce smog in the Los Angeles basin.¹

CONCLUSION

For the foregoing reasons, this Court should grant Sierra Club’s Motion for leave to file an *amicus curiae* brief.

¹ *Rinnai America Corp. et al. v. S. Coast Air Quality Mgmt. Dist.*, 2:24-cv-10482, Complaint for Declaratory and Injunctive Relief (Dec. 5, 2024).

Dated: December 13, 2024

Respectfully submitted,

/s/ Bridget M. Lee
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CERTIFICATE OF SERVICE

I Bridget M. Lee, hereby certify that on December 13, 2024, I caused a true and correct copy of the foregoing Motion for Leave to File an *Amicus Curiae* Brief in Opposition to Plaintiffs' Motion for Summary Judgment to be served on counsel for all parties via the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

Dated: December 13, 2024

/s/ Bridget M. Lee
Bridget M. Lee